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10/663,950

09/16/2003

Daniel J. de Waal

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EXAMINER

THOMASSON, MEAGAN J

ART UNIT

PAPER NUMBER

3714

MAIL DATE

DELIVERY MODE

12/12/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/663,950

Applicant(s)

DE WAAL ET AL.

Examiner

Meagan Thomasson

Art Unit

3714

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 September 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20, 23-50 and 53-60 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20, 23-50, 53-60 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

The examiner acknowledges the amendments made to claims 1,8-9,12,16,25,31,38-39 and 46. Claims 21-22 and 51-52 have been canceled.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 16 and 46 recite the limitation "**the recorded subset** of the plurality of game play outcomes includes intermediary outcomes" (emphasis added). There is insufficient antecedent basis for this limitation in the claim. The claim recites "recording the game play outcomes ... wherein the recorded game play outcomes include non-winning outcomes including losing outcomes", however there is no mention of recording a subset of the outcomes.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-7,13-20,23,29-37,43-50,53,59 and 60 are rejected under 35 U.S.C. 103(a) as being unpatentable over Walker et al. (US 6,692,353 B2) in view of Boushy (US 5,761,647).

Regarding claims 1,31 Walker discloses receiving a first set of game outcomes from play of a game associated with a first slot machine, storing the first set of game data in a database, receiving a second set of game outcomes from play of a second game associated with a second slot machine and storing the second set of game outcomes in the database. Specifically, Walker discloses a bonus game wherein a player may obtains game outcomes from a plurality of slot machines (col. 2, lines 31-33). The game outcomes are then stored in a database (Figs. 6A-6C). The game play outcomes comprise final and intermediary outcomes, and the bonus is awarded at least in part on the intermediary outcomes. For instance, in the game where a player must obtain 100 lemons, the first outcome is obtaining the first lemon and the last outcome is obtaining the 100th lemon. Lemons 2-99 are intermediate outcomes, but are still necessary for awarding the bonus. Additionally, the bonus, or comp points, awarded by Boushy are based on the amounts wagered by a player. The higher the wager, the larger the bonus, regardless of whether the outcome is the first, intermediate, or final outcome of the gaming session.

Walker does not disclose storing game outcomes received from a first enterprise, and storing game outcomes received from a second enterprise independent of the first, wherein the term enterprise is interpreted to mean business organization.

Boushy discloses a customer tracking system and method wherein a customer is awarded bonus points based on their tracked activity at a plurality of casino properties (abstract). The tracking system maintains all wagering activity, including a first set of wagering activity from game play at a first enterprise, and a second set of wagering

activity from game play at a second enterprise, wherein all game play data is stored in a database (col. 8, lines 55-64). Boushy discloses accumulating all wagering data, including the customer's estimated average daily winnings (col. 12, lines 55-67), however Boushy does not specifically disclose storing game outcomes. The player tracking system disclosed by Boushy are well known in the art. In a typical player tracking system, a player is issued a card containing an identifier that tracks all activity, including wagering activity and transactions made at a participating casino, and issues a player comps based said activity. It would have been obvious to one of ordinary skill in the art to combine the gaming outcome storage of Walker with the inter-casino player tracking of Boushy in order to expand the number of slot machines on which a player may participate in the bonus game of Walker. The analogous inventions disclosed by Walker and Boushy both disclose tracking customer playing activity and issuing awards based on said tracked activity. Additionally, Walker discloses that the invention may be implemented over the Internet (col. 5, lines 33-36), which may contemplate providing gaming machines in remote locations, such as independent enterprises.

Regarding claim 2,32 Walker discloses that the game outcomes are stored in the database associably with an identity of a player (col. 10, lines 11-25).

Regarding claim 3,33 Boushy discloses that the database is maintained by an enterprise organizationally distinct from the first enterprise and the second enterprise (col. 4, lines 16-25).

Regarding claim 4,34 a player may be awarded a bonus based on the first set of game outcomes and the second set of game outcomes associated with a player. As

disclosed in Walker, a player's gaming outcomes are stored for each play session at a slot machine and a bonus may be issued based upon said sets of gaming outcomes (col. 14, lines 25-39). Additionally, Boushy discloses that the player is awarded comp points, i.e. a bonus, for their tracked betting activity (col. 8, line 55- col. 9, line 2). The player may exchange these points gifts, meals, cash, etc. (abstract).

Regarding claim 5,35 Walker discloses that the bonus may be awarded based on a parameter set (col. 5, lines 1-3; col. 7, lines 28-39).

Regarding claim 6,36 Walker discloses that the bonus parameter set may include a time period in which the outcomes in the first set of game outcomes occurred and the outcomes in the second set of game outcomes occurred (col. 9, lines 10-32).

Regarding claim 7,37 the bonus parameter set may include a minimum-qualifying wager. This is inherently true of Walker, as the slot machine requires a minimum wager to be made in order to proceed with play of the primary game, and because the bonus is awarded based on the outcomes of the primary game, a minimum wager must be made in order to qualify for the bonus.

Regarding claim 13,43 wherein the first and second set of game outcomes comprise winning outcomes and losing outcomes, several of the games disclosed by Walker involve obtaining a predetermined number of symbols, as can be seen in Fig. 5B, wherein a bonus game is disclosed wherein obtaining 100 lemons qualifies a player for an award. The lemons may be obtained in any number of slot machine reel display configurations, including non-winning configurations. For instance a player may obtain a reel configuration of cherry, lemon, and bar, which may not qualify for an award in the

primary game payable but puts the player at having obtained 100 lemons, earning them a bonus rewards. Therefore, the gaming outcomes may comprise winning and non-winning configurations.

Regarding claims 14,15,29,30,44,45,59 and 60 Boushy discloses tracking player wagering data at live table games, and further that tracking players at live table games involves reading an identification card and entering betting data (col. 5, line 65 – col. 6, line 7).

Regarding claim 16, 23,46,53 Walker discloses accepting, recording and comparing a plurality of game play outcomes comprising winning and non-winning outcomes, including losing outcomes, and awarding a bonus if the game play outcomes match the qualifying game play outcome requirement. One of the games disclosed by Walker involves obtaining a predetermined number of symbols, as can be seen in Fig. 5B, wherein a bonus game is disclosed wherein obtaining 100 lemons qualifies a player for an award. The lemons may be obtained in any number of slot machine reel display configurations, including non-winning configurations. For instance a player may obtain a reel configuration of cherry, lemon, and bar, which may not qualify for an award in the primary game payable but puts the player at having obtained 100 lemons, earning them a bonus rewards. Therefore, the gaming outcomes may comprise winning and non-winning configurations. Further, the game play outcomes comprise final and intermediary outcomes, and the bonus is awarded at least in part on the intermediary outcomes. For instance, in the game where a player must obtain 100 lemons, the first outcome is obtaining the first lemon and the last outcome is obtaining the 100th lemon.

Lemons 2-99 are intermediate outcomes, but are still necessary for awarding the bonus. Additionally, the bonus, or comp points, awarded by Boushy are based on the amounts wagered by a player. The higher the wager, the larger the bonus, regardless of whether the outcome is the first, intermediate, or final outcome of the gaming session.

Additionally, the bonus, or comp points, awarded by Boushy are based on the amounts wagered by a player. The higher the wager, the larger the bonus, regardless of whether the player wins or loses the gaming round. Thus, the bonus is computed based at least in part on non-winning outcomes.

Regarding claim 17,47 Walker discloses that the bonus may be awarded if the game play outcomes match the qualifying game play outcome requirement within a qualifying time period (Fig. 5A, "Game Time Limit"; col. 9, lines 12-15).

Regarding claim 18,48 Walker discloses the qualifying game play outcome requirement is a combination of game play outcomes (Fig. 5B).

Regarding claim 19,49 Walker discloses the combination of game play outcomes includes a sequence of game play outcomes (col. 8, lines 28-41).

Regarding claim 20,50 neither Walker nor Boushy disclose awarding a bonus for obtaining a sequence of game play outcomes that include wildcard game play outcomes. However, awarding a player for obtaining a wildcard is notoriously well known to one of ordinary skill in the art, and would have been an obvious addition to the teachings of Walker and Boushy.

Claims 8-12 and 38-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Walker et al. (US 6,692,353 B2), Boushy (US 5,761,647) and further in view of Acres (US 6,319,125).

Regarding claim 8,38 Walker in view of Boushy disclose a method of tracking game play by collecting game outcome data from a plurality of gaming establishments and storing is associably with a player identity, and further issuing an award based on said game outcome data. Neither Walker nor Boushy disclose awarding a progressive bonus that is incremented based upon the stored first set of game outcomes associated with a set of participating progressive bonus players and the stored second set of game outcomes associated with the set of participating progressive bonus players. Walker does disclose that the bonus may be issued to a set of participating players (col. 14, lines 25-39) and that the bonus parameter set may include a timer period in which both sets of game outcomes must occur (col. 9, lines 11-15).

Further, Acres discloses a method of awarding a progressive jackpot bonus prize beginning in column 7, line 65 and continues through column 9 line 12, wherein a first set of players is awarded an initial bonus and a secondary subset of eligible players are awarded a second bonus, referred to as a consolation prize.

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Walker, Boushy and Acres in order to provide a multip-property player tracking system that allows customers to participate in a

progressive bonus game as can be seen in Fertitta, III et al. (US 6,302,793), wherein Fertitta discloses such an invention.

Regarding claims 9,10,39 and 40 Walker discloses that a first portion of the bonus may be awarded to one of the participating player based on their accumulated game outcomes and that a second portion of the bonus may be awarded to a subset of the players based upon their accumulated game outcomes in col. 15, lines 21-42.

Regarding claim 11,41 Walker discloses that the games are poker games (col. 3, lines 54-57) and the qualifying outcome is a number of poker hands (col. 10, lines 38-47).

Regarding claim 12,42 wherein a selected player may be awarded a second bonus based upon the first and second set of game outcomes and a second bonus parameter set, in Fig. 5B Walker discloses that upon obtaining 6 jackpots (i.e. bonuses) with payouts of more than 20 tokens, a player may be awarded a second bonus of \$30.

Claims 24- 28 and 54-58 are rejected under 35 U.S.C. 103(a) as being unpatentable over Walker (US 6,692,353), Boushy (US 5,761,647) Acres (US 6,319,125) and further in view of McCrea, Jr. (US 6,346,044).

Walker, Boushy and Acres do not disclose a progressive jackpot that is incremented based on an increment qualifying outcome. Acres discloses incrementing the progressive jackpot by a base percentage of every wager received (col. 6, lines 18-34), however, McCrea discloses a progressive jackpot that may be incremented upon the occurrence of certain game outcomes, for instance if the dealer busts in a game of

blackjack (Fig. 6c, stage 672-675). It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of a multi-enterprise player tracking system featuring a progressive jackpot of Walker, Boushy, Acres with the teachings of McCrea to utilize a qualifying outcome in order to increment a progressive jackpot as this is merely a design choice available to the gaming facility. Changing the method by which the progressive jackpot is funded does not render the invention new, novel or unobvious.

Regarding claims 25 and 27, wherein the game includes a second progressive jackpot, Acres discloses a plurality of networked gaming devices linked to contribute to a plurality of bonus pools. Column 4, lines 49-54 describe the process by which the bonus pools are funded as "A base percentage 303 of each wager 301 is accumulated into a bonus pool 304 for funding each bonus prize. Optionally, a secondary percentage 305 of each wager 301 is accumulated into a "hidden" pool 306 for creating a seed value for the next bonus prize." Similar to incrementing the first progressive jackpot upon the occurrence of increment-qualifying event, it is a design choice to increment the second progressive jackpot upon the first progressive jackpot reaching a maximum. Additionally, Acres discloses utilizing consolation prizes to be awarded to a subset of participating players in addition to the progressive jackpot being awarded to a first player upon obtaining a progressive jackpot qualifying outcome (col. 7, line 65 - col.8 line 67).

Response to Arguments

Applicant's arguments filed September 13, 2007 have been fully considered but they are not persuasive. Specifically, applicant argues that the combination of Walker in view of Boushy do not meet the newly amended limitations of claims 1, 16, 31 and 46, as the interpretation taken by the examiner of the limitation "receiving game outcomes that comprise intermediary game outcomes" is inconsistent with the applicant's specification definition of the word "game". Applicant argues that "applicant's specification does not define a 'game' as a series of plays, but rather a hand of poker or a pull of a slot machine Handle" (Remarks, P. 18). However, applicant's claim language recites "recording a set of game outcomes", which indicates that a single game is played multiple times and the outcome from each game play is recorded. This is the process also described by Walker, and thus Walker does meet the limitations of the invention as claimed.

Further, in response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., intermediate outcome [e.g. in a draw poker machine, the dealt hand]) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Meagan Thomasson whose telephone number is (571) 272-2080. The examiner can normally be reached on M-F 830-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Xuan Thai can be reached on (571) 272-7147. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Meagan Thomasson
December 4, 2007

A handwritten signature in black ink, appearing to read 'Xuan M. Thai', with a stylized, cursive script.

XUAN M. THAI
SUPERVISORY PATENT EXAMINER